LYRA-VEGA II MINING ASSOCIATION

IBLA 85-533 Decided April 28, 1986

Appeal from a decision of the California State Office, Bureau of Land Management, denying a petition for temporary deferment of annual assessment work on 24 mining claims.

Affirmed.

1. Mining Claims: Generally--Mining Claims: Assessment Work

A petition for deferment of assessment work may only be granted pursuant to 30 U.S.C. § 28b (1982) and 43 CFR 3852.1 where "legal impediments" exist which affect the right of a mining claimant to enter upon the claim. In the absence of an adverse administrative determination regarding the validity of a mining claim, where the notice of location indicates the claim was located prior to any segregation of the land by an application for withdrawal, denial of a petition for deferment will be affirmed where the record discloses appellant had access to the claim, notwithstanding a warning that any attempt to locate or relocate the claim after segregation would be treated as a trespass.

APPEARANCES: Bryant A. Ross, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Lyra-Vega II Mining Association (Lyra-Vega II) has appealed from a March 14, 1985, decision of the California State Office, Bureau of Land Management (BLM), denying its petition for deferment of assessment work on placer mining claims LV 115 through LV 138, secs. 7, 8, 9, 17, 18, and 19, T. 28 S., R. 43 E., Mount Diablo Meridian (in the Christmas Canyon area).

Appellant's petition for deferment of assessment work was filed with BLM on December 31, 1984, for the assessment year beginning September 1, 1983. That petition alleges three grounds for a deferment. First, appellant asserts that in the winter and spring of 1983, a "rare and heavy snow blanketed the region," causing the destruction of roads and access routes through the valley where the claims are located. Second, a document entitled "Reason for Request for Deferment of Assessment Work and Summary of Petition," filed along with the petition itself, contains an assertion that "[a]ll 24 of our Christmas Canyon claims are facing litigation as the Navy seeks to assert itself to

acquire our claims. We are preparing for litigation." 1/ Third, the petition states the Navy had repeatedly denied written and verbal requests for permits for access to the claim sites. The petition refers to a "threatening letter" from the Navy which informed appellant that "any further trespass activities will be referred to the proper law enforcement agencies for action." That letter, addressed to Byron Ross 2/ from M. A. Kelley, Staff Judge Advocate of the Navy, dated March 2, 1984, informed Ross that on January 20, 1984, notice of a proposed withdrawal of some 8,320 acres of land in the Christmas Canyon area was published in the Federal Register. 3/ The letter asserted that although appellant's notices of location of its claims recite a discovery date of March 7, 1983, appellant had not actually entered the area and staked those claims until after January 27, 1984. According to the petition, appellant interpreted the letter as a threat of "unlimited force":

> Valuing our lives more than the claims and NOT desiring an escalation of the conflicts and wishing to prevent a bloody confrontation with the military forces of the U.S. Navy in this area we have deferred to not do the assessments until we can resolve the matter peacefully amongst ourselves or until a civilian judge and jury can review all these matters and settle the conflicts. [Emphasis in original.]

In response to the petition, on January 15, 1985, BLM issued a decision explaining there are "limited circumstances that allow deferment of

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1/ On Jan. 20, 1984, the Department of the Navy published notice in the Federal Register, 49 FR 2550, that it had applied for the withdrawal of approximately 8,320 acres in San Bernardino County, California. The withdrawn lands embrace the placer mining claims involved herein. Correspondence between appellant and the Naval Weapons Center located in China Lake, California, an area contiguous to the acreage where appellant has located its claims, indicates a dispute as to whether appellant met the statutory requirements for locating the claims prior to withdrawal.

2/ Much of the correspondence with appellant was signed by or addressed to Byron Ross, and many documents filed with BLM on appellant's behalf were executed by Byron Ross. Appellant has endeavored on appeal to repudiate an apparent abandonment of certain claims executed by Byron Ross. On Sept. 1, 1983, Byron Ross executed a Notice of Intent to Abandon appellant's placer claims LV 115 and LV 118 through LV 126, and on Mar. 7, 1984, he executed a similar Notice of Intent to Abandon placer claims LV 116, LV 117, and LV 127 through LV 138, so that all 24 claims in the Christmas Canyon area were purportedly abandoned. On Apr. 14, 1984, however, Byron Ross executed a letter in his capacity as president of Lyra-Vega II, asserting the two Notices of Intent to Abandon were submitted under pressure by the Navy: "I was personally acting under duress and fear, and did not have the consent nor the approval of the mining association." In that letter, Byron Ross requested that the claims be relisted. The issue of abandonment is beyond the scope of the present appeal which is restricted to the propriety of the denial of the petition for deferment.

3/ 49 FR 2550 (Jan. 20, 1984).

assessment work." BLM stated that "action of the elements such as washout or destruction of roads and bridges leading to mining claims" is not such a circumstance, and that a claimant who is "facing or preparing for litigation," rather than one who can cite a court order denying access to the claim site, for example, is not entitled to a deferment. As to appellant's third basis for deferment, BLM noted appellant did not submit a copy of the Navy's "threatening" letter with the petition, and allowed appellant 30 days from receipt of its decision to provide confirmation that access to the claims area had been denied.

Appellant subsequently tendered a photocopy of selected portions of the March 2, 1984, letter (asserting that omitted parts were irrelevant and defamatory). Appellant referred to the statement in the letter that "[a]ny further trespass activities will be referred to the proper law enforcement agencies" in support of its contention that access to the claims was denied. 4/

BLM was unconvinced by appellant's characterization of the Navy's letter, as disclosed by its decision dated March 14, 1985: 5/

> Petitioner and [the Navy] both agree that the claims can be accessed by a paved public highway. Assessment work for the 1983-1984 assessment year has been performed by other claimants in the same area.
>
> According to documentation presented by the [Navy] and petitioners, there are issues which require resolution, possibly in civil court. However, no litigation is pending at this time.

On appeal, the brief filed on behalf of appellant is voluminous and deals in part with issues which are outside the scope of this appeal. However, appellant basically restates the grounds for deferment asserted before BLM.

4/ The China Lake Naval Weapons Center was also provided a copy of the decision requiring additional information and responded in a letter to BLM dated Jan. 29, 1985. Regarding the contention that snow and rain destroyed all roads and routes of access to the claims area in the winter and spring of 1983, the letter asserted the presence of a public road maintained at the expense of another mining claimant who drove in and out of the area in an ordinary sedan during the assessment year. Further, the letter asserted the area remained accessible to two-wheel drive vehicles via open public roads for most of the assessment year. The Navy stated it was not aware of any pending litigation involving appellant's claims; however, the Navy asserted that if the withdrawal of the land described in the Jan. 20, 1984, Federal Register notice is approved, then validity determinations would take place followed by condemnation of any claims determined valid. The Navy acknowledged it had not granted appellant permission to use the Navy's restricted access road, but noted that other claimants had not requested such permission due to the presence of public roads in the area.

5/ Actually, the Mar. 14, 1985, decision was a re-issuance of an identical decision dated Feb. 25, 1985, which had not been sent by certified mail.

[1] A minimum of $ 100 worth of labor must be performed or improvements made on a mining claim every year after location of the claimant prior to patent thereof. 30 U.S.C. § 28 (1982); 43 CFR 3851.1. Failure of the locator of a mining claim to perform labor or construct improvements of a value of $ 100 annually renders the claim subject to loss by relocation of the claim by another party, or, where the land is subsequently withdrawn from entry, a failure to substantially comply with the assessment work requirement may lead to a forfeiture to the United States. 30 U.S.C. § 28 (1982); 43 CFR 3851.3(b); see, e.g., Ickes v. Virginia-Colorado Development Corp., 295 U.S. 639, 645 (1935); Oil Shale Corp. v. Udall, 261 F. Supp. 954 (D. Col. 1966), aff'd, 406 F.2d 759 (10th Cir. 1969), rev'd on other grounds, Hickel v. Oil Shale Corp., 400 U.S. 48 (1970); United States v. Haskins, 59 IBLA 1, 88 I.D. 925 (1981), aff'd, Haskins v. Clark, No. CV-82-2112-CBM (C.D. Cal Oct. 30, 1984).

However, provision is made by statute for the temporary deferment of the annual assessment work under prescribed circumstances:

> The performance of not less than $ 100 worth of labor or the making of improvements aggregating such amount, which labor or improvements are required under the provisions of section 28 of this title to be made during each year, may be deferred by the Secretary of the Interior as to any mining claim or group of claims in the United States upon the submission by the claimant of evidence satisfactory to the Secretary that such mining claim or group of claims is surrounded by lands over which a right-of-way for the performance of such assessment work has been denied or is in litigation or is in the process of acquisition under State law or that other legal impediments exist which affect the right of the claimant to enter upon the surface of such claim or group of claims or to gain access to the boundaries thereof. [Emphasis added.]

30 U.S.C. § 28b (1982). 6/

The purpose of the provision is to protect a claimant whose right of access to his mining claim has been impeded or denied. John W. MacGuire, 35 IBLA 117, 118 (1978). In order for appellant's petition for deferment to meet the requirements of 30 U.S.C. § 28b (1982) and 43 CFR 3852.1, conditions must exist which impede appellant's legal right of access. This Board has repeatedly emphasized that a deferment may only be granted where "legal impediments" exist which affect the right of the claimant to enter upon the surface of the claims and physical access to the claims has been interdicted.

6/ 43 CFR 3852.1, which implements that statute, provides likewise:

"The deferment may be granted where any mining claim or group of claims in the United States is surrounded by lands over which a right-of-way for the performance of assessment work has been denied or is in litigation or is in the process of acquisition under State law or where other legal impediments exist which affect the right of the claimant to enter upon the surface of such claim or group of claims or to gain access to the boundaries thereof."

Minerals Engineering Co., 71 IBLA 402 (1983); A. J. Maurer, Jr., 36 IBLA 4 (1978); Oliver Reese, 34 IBLA 103 (1978).

The Board has had several occasions to consider what constitutes a sufficient legal impediment to access to justify granting a petition for deferment. In Portland General Electric Co., 29 IBLA 165 (1977), appellants asserted BLM officials threatened trespass action if they proceeded with assessment work on their mining claims located on previously withdrawn land. A lawsuit had been filed by appellants against the Department of the Interior challenging the validity of the withdrawal, which litigation was still pending. The Board held that no legal impediments to access existed which would have justified deferment where there had been no administrative determination with respect to the validity of the claims and litigation was pending in Federal court regarding the validity of the withdrawal. Id. at 167. Thus, the fact that trespass charges have been threatened is not itself sufficient to justify deferment. In American Resources, Ltd., 44 IBLA 220 (1979), appellant was physically barred from entering the claims to perform assessment work by no-trespassing notices, barricades, and threats of criminal prosecution by National Park Service officials at the site. Further, it must be noted this occurred after an initial BLM decision declaring the claims null and void. The Board found this to be a sufficient legal impediment to entry upon the claims to justify a deferment. Id. at 226-27.

It is well established that the mere pendency of litigation concerning mining claims, in the absence of a decree enjoining petitioner from entry upon the claims, is insufficient to justify deferment. In Charlestone Stone Products, Inc., 32 IBLA 22 (1977), the Board decided an appeal from denial of deferment sought by a mining claimant whose claims had been successfully contested by the Department but upheld in the initial stages of judicial review which was still pending. The Board held that litigation regarding claims is not grounds for deferment where claimant has not been denied access. Moreover, in Andrew L. Meese, 50 IBLA 26, 87 I.D. 395 (1980), the Board declined to grant a deferment where claims were located on withdrawn land and had been earlier held to be invalid by the Board on the ground that, insofar as the Department was concerned, the claims were nonexistent.

A different result may occur if petitioner has been enjoined from entry on the claims. Although the mere fact that litigation concerning mining claims is pending (with the associated risk that assessment work invested in the claims may be lost as a consequence of an unfavorable court decision) is not sufficient to justify a deferment, an injunction precluding petitioner from entry upon the claims will suffice. Continental Oil Co., 36 IBLA 65, 68 (1978).

Reference to the full text of the letter of March 2, 1984, appearing in the file discloses a dispute between Navy officials and appellant regarding whether the claims at issue were actually located prior to withdrawal of the land as the location notices purport to reflect. In essence, the letter notifies appellant that any effort to locate or relocate mining claims on land segregated by the withdrawal after the date of the withdrawal will be treated as a trespass and referred to law enforcement authorities, including BLM, for appropriate action. Applying the precedents cited previously to the facts of this case, it is clear that appellant's legal right of access to the

claims was not denied. The Navy did not authorize access via the route most desired by appellant -- the Randsburg Wash access road -- which appears to be a restricted access road located within the China Lake Naval facilities. It appears from the record that there was other access to appellant's claims via public roads, although this might not have been as convenient for appellant's purposes. Further, the threat of referring trespass allegations to responsible authorities, especially in the absence of any administrative determination regarding the validity of appellant's claims, cannot be considered adequate grounds for deferment of assessment work. See Portland General Electric Co., supra.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

James L. Burski
Administrative Judge

John H. Kelly
Administrative Judge